

**RECEIVED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
NOV 03 2014

BILLINGS DIVISION

CLERK, U.S. DISTRICT COURT  
DISTRICT OF MONTANA  
BILLINGS, MONTANA

UNITED STATES OF AMERICA,	)	Case No. CR-06-79-BLG-CCL
Plaintiff-Respondent,	)	
VS.	)	MOTION FOR REDUCTION OF
	)	SENTENCE PURSUANT TO § 18 U.S.C
	)	§ 3582(c)(2)
LASHAWN JERMAINE JOHNSON,	)	
Defendant-Petitioner	)	

COMES NOW, Petitioner LaShawn Jermaine Johnson Pro Se, hereby moves this Honorable Court for a reduction in the sentence imposed on February 13, 2012.<sup>1</sup> The motion is made pursuant to 18 U.S.C. § 3582(c)(2) and is based upon the Memorandum of Points and Authorities, all Files and Records in this case, and such further argument and evidence as may be presented at a hearing on this motion. In short, it turns upon the new retroactive amendment of Amendment 782.

I.

INTRODUCTION

On February 13, 2012, Petitioner LaShawn Jermaine Johnson was sentenced for various drug crimes involving Cocaine Base in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(iii), to serve 235 months of imprisonment and 5 years of supervised release. The sentence was imposed under the sentencing guidelines, with a base offense level computed under § 2D1.1 of the guidelines for a cocaine base quantity of [1.5KG]. That base offense level under the guideline in effect at the time was 36. Combined with other guideline factors, it produced a guideline range of 188-235 months. The sentence imposed by the court was 235 months, which

Page 100 of 100  
Case 1:06-cr-00079-DJC Document 191 Filed 11/03/14 Page 2 of 7  
was the high end, based on a downward sentencing for Leadership role.

Subsequent to Petitioner's sentencing- on February 13, 2012, an amendment to § 2D1.1 of the guidelines took effect which, generally, increased the amount of Cocaine base necessary to trigger the enhanced-sentencing provisions. Specifically, the amendment recognized the unreasonable harsh punishments for individuals sentenced for All Drugs. That amendment specifically, reduces the base offense level for the [1.5KG] quantity of cocaine base in Johnson's case by two levels, to 32. See U.S.S.G. § 2D1.1 (c)(3). This amendment was adopted in response to studies which raise grave doubts about the fairness and rational of drug sentences incorporated into the sentencing guidelines.

Furthermore, subsequent to the effective date of the amendment to § 2D1.1, the United States Sentencing Commission considered whether to make the amendment retroactive under the authority created by 18 U.S.C. § 3582(c)(2). It took that action on July 18, 2014, and voted IN FAVOR of making the recent amendment retroactive, implementing the amendment effective November 1, 2014. Based under the 2014 amendment and the statutory authority underlying it, Petitioner Johnson brings this motion to reduce and/or modify his sentence pursuant to the provisions under the 2014 amendment.

## II.

### ARGUMENT

#### A. PETITIONER'S TOTAL OFFENSE LEVEL SHOULD BE REDUCED FROM 36 TO 34 AND THE RESULTING GUIDELINE RANGE REDUCED FROM 188-235 MONTHS TO 151-188 MONTHS BASED UNDER THE RETROACTIVE 2014 (782) AMENDMENT

Reposed in this Honorable Court is the jurisdiction and authority to modify Petitioner's term of imprisonment improved pursuant to 18 U.S.C. § 3582(c)(2), which provides:....[I]n the case of a Defendant who has been sentenced to a term of imprisonment based on a statutory range that has subsequently been lowered

by the Sentencing Commission pursuant to 28 U.S.C. § 994(e), upon the motion of the defendant...the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Section 1B1.10 is the guidelines policy statement which implements 18 U.S.C. § 3582(c)(2), and captioned "Retroactivity of Amended Guideline Range (Policy Statement)" is compatible with said Title 18 U.S.C. § 3582(c)(2). Here, Petitioner Johnson, qualifies as to these as to modification of his sentence and would have been qualified if "said provisions" had been in effect at the time he was sentenced under 1B1.10(b) of the Sentencing Guidelines, it is provided that... In determining whether a reduction in sentence is warranted for a Defendant eligible for consideration under 18 U.S.C. § 3582(c)(2), the court should consider the sentence that it would have originally imposed had the Guidelines, as amended been in effect at the time.

In the instant case, Petitioner comes before this court requesting it to impose a sentence deviating from the Guideline range in effect when he committed the crime, and re-sentence him under the new retroactive guideline amendment, implementing Amendment 782 effective November 1, 2014.

Here, Petitioner committed an offense which involved 1.5KG of cocaine base. At the time Petitioner committed this crime 21 U.S.C. § 841(b)(1)(A)(iii), the statute in effect required a Ten-year mandatory minimum sentence for offenses involving 50 grams or more of cocaine base. The Presentence Report found that the offense involved 1.5 KG of cocaine base and set the base offense level at 34.

On July 18, 2014, the Sentencing Commission voted in favor of making Amendment 782 retroactive. The amendment reduces all drug offense levels by two points. Therefore, the 782-amended Drug Quantity table sets, in Johnson's case, the base offense level at 32 for at least 840 grams but less than 2.8. KG of Cocaine Base.

The conundrum before this court is that under the law in effect prior to November 1, 2014, Petitioner faced a Ten-year mandatory minimum sentence or a guideline range of 188-235 months. However, if this Honorable court were to apply the adjustments made in Amendment 782, Petitioner would still be exposed to a mandatory minimum Ten-year sentence sentence or a guideline range of 151-188 months, based under the adjusted guidelines.

Under the new retroactive guideline amendments of 782, in the present case, if this Court were to exercise its discretion and use the adjusted guidelines, Johnson's base offense level would be lowered by two-levels, resulting in a new total offense level of 34. A total offense level of 34 and a criminal history category of I would result in a new advisory resulting guideline imprisonment range of 151-188 month.

Application of 782 to the guidelines, in Petitioner's case, results in a decrease of the Base offense Level from 34 to 32 a decrease in the Total Offense Level from 36 to 34 and a decrease in the resulting guideline from 188-235 months to 151-188 months. The Base offense level 34 for 1.5 KG of cocaine base is amended to a base offense level of 32 of the amendment. The Total Offense level of 34 resulting guideline range of 151-188 months, which the ten-year Statutory Mandatory Minimum under section § 841(b)(1)(A)(iii)

is amended to "the same" Mandatory Minimum under section 841(b)(1)(A)(iii).....now, since Petitioner does still have the threshold amount necessary to trigger the Ten-year statutory mandatory minimum under section § 841(b)(1)(A)(iii), under the new retroactive guideline of Amendment 782.

Petitioner was previously sentenced at the high end of the advisory guideline range of Counts I, II, III, and VII. However, Petitioner asks this honorable court to consider in entering a sentence at the "Low end" under the reduced guideline. If this court chose to do so, the new sentence could be as low as 151 months, a 84 month reduction. Therefore, because Petitioner Johnson has been sentenced upon a sentencing range which has been subsequently lowered and made retroactive by the U.S. Sentencing Commission, Petitioner moves this Honorable Court to reduce the term of imprisonment in accordance with 18 U.S.C. § 3582(c)(2), and/or the new retroactive guideline amendment implementing Amendment 782 effective November 1, 2014, on Counts I, II, II, and VII. It follows from the decision in the proceeding that the 2014 amendment justifies a reduction of the Total Offense level 36 to 34 and a reduction of the resulting guideline range of 188-235 months to 151-188 months, and that the circumstances are sufficient compelling to justify a deviation from the sentencing guidelines in favor of the 2014 782 amendment.

Therefore, the only issue is whether Petitioner should still receive a 188 month sentence under the guideline range 151-188 months, for his 841(b)(1)(B)(iii) conviction. Here, Petitioner contends that the court in good conscious should not want to continue to apply the pre-existing and harsher guideline range-

sentence thus arriving at a sentence that Congress and the U.S. Sentencing Commission believes to be totally unfair. Moreover, the continued application of a criminal penalty, as in Johnson's case that fails to serve any legitimate governmental objective would be so arbitrary and irrational that it would violate Petitioner's right to due process.

Based upon the context of the amendment, its title, its preamble, and retroactivity, its quite clear that Congress and the Sentencing Commission does not want Judges to continue to impose harsher guideline sentences after enactment. To now call for its continued application to Johnson's sentence is inconsistent at best and hypocritical at worst.

In short, based on the new retroactive guideline amendments implementing 782 § 2D1.1, the relevant information, and supporting materials, Petitioner asks this Honorable Court to consider in significantly reducing his sentence at the low end of the amended resulting guideline range [151-188] months.

Furthermore, Petitioner urges that his goal is to rehabilitate himself as to enter society upon release as a fit and proper person to pursue a useful and constructive life for himself, his family, and community.

#### FOOTNOTES

<sup>1</sup> Just to clarify defendant's case background: He was originally sentenced in March, 2007 for various drug crimes involving cocaine base and use of a gun under 18 U.S.C. § 924(c). For his drug crimes he was sentenced to a total of 360 months with an additional 60 months consecutive for the gun. After an appeal the Ninth Circuit vacated that sentence because of the § 924(c) conviction. On re-sentencing after remand from the circuit defendant was sentenced under the 2009 guidelines to 293 months for his drug offenses and 60 consecutive months for the gun for a total of 353 months. Then in 2012 under the Fair Sentencing Act Defendant's sentence was reduced to 235 months for his drug offenses and 60 consecutive months for the gun for a total of 295 months. This latter re-sentencing prison time is the subject of this motion. The 295

FOOTNOTES CONT.

months for the drugs was the top end of the then applicable guideline range of 188-235 months.

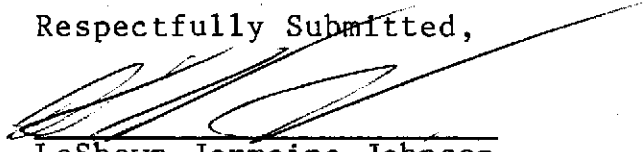
JUDICIAL NOTICE

Petitioner asks this court to take Judicial Notice of his rehabilitation Efforts. See Attachment (Educational Data Sheet Programing Accomplishments). Moreover, this court should note from Petitioner's criminal history, that this was Petitioner's first offense. A reasonable person-- [as himself]-- if the criminal law is designed to deter criminal acitvity-- could not anticipate that the first offense you got involved with is going to amount to almost 25 years.

CONCLUSION

Wherefore, Petitioner whose sentence guideline were hereto calculated by the court to be 188 to 235 months, here asks this court to Grant the foregoing motion for relief by sentencing him at the low end amended guideline range 151 months under the new retroactive amendment implementing Anendment 782 effective November 1, 2014.

Respectfully Submitted,



LaShawn Jermaine Johnson  
Reg. #41481-048  
FCI/Mendota  
P.O. BOX 9  
Mendota, CA. 93640

Date: 11/3/14